GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

UNSTARRED QUESTION NO:3187
ANSWERED ON:15.04.2008
. GUIDELINES TO PATENT GENE SEQUENCE
Mahato Shri Narahari

Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government is formulating any guidelines to Patent gene sequences;

(b) if so, the details thereof; and

(c) the manner in which it is likely to help India in preventing other countries from using some biological material for commercial purposes?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMERCE AND INDUSTRY(SHRI ASHWANI KUMAR)

(a) & (b): The procedure for examination and grant of patents in all fields of technology, including gene sequences, is regulated by the provisions of the Patents Act, 1970 and the Patents Rules, 2003 as amended from time to time.

(c): The existing provisions of the Biological Diversity Act, 2002 and the Patents Act, 1970 have sufficient provisions to prevent misuse and misappropriation of biological material and resources.

The Biological Diversity Act, 2002 aims at regulating access to biological resources and associated knowledge from the country so as to ensure equitable sharing of benefits arising out of their use.The Act also provides for prior approval of the National Biodiversity Authority before obtaining any biological resource occurring in India,and before applying for any intellectual property right based on a biological resource obtained from India.

As per the Patents Act, 1970, plants, animals, seeds, varieties and traditional knowledge are not considered inventions and therefore not patentable subject matter.In order to prevent misuse of biological materials, Section 10 (4)
(ii) (D) of the Patents Act, 1970 mandates disclosure of the source and geographical origin of the biological material,when used in an invention while applying for patents in India. Further, sections 25 and 64 of the said Act provide non-disclosure or wrongful disclosure of source and geographical origin of the biological material as grounds for opposition and for revocation of a granted patent.